

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Implement the
California Renewables Portfolio Standard Program.

Rulemaking 04-04-026
(April 22, 2004)

**COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON
THE PROPOSED DECISION OF ALJ MATTSON ON
AMENDED PETITION FOR MODIFICATION OF DECISION 04-06-014**

October 22, 2007

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on the Proposed Decision of Administrative Law Judge (ALJ) Mattson on Amended Petition for Modification of Decision 04-06-014 Regarding Standard Terms and Conditions (Proposed Decision). The Proposed Decision was mailed in this proceeding on October 1, 2007. These comments are timely filed and served pursuant to Rule 1.10 and Article 14 of the Commission's Rules of Practice and Procedure.

**THE PROPOSED DECISION APPROPRIATELY ADOPTS MOST OF THE AMENDED
PETITION'S RECOMMENDATIONS, BUT SHOULD BE MODIFIED FURTHER TO
CORRECTLY REFLECT CEERT'S POSITION AND REDUCE THE NON-
MODIFIABLE STCS TO THOSE IDENTIFIED BY THE AMENDED PETITION.**

At page 3, the Proposed Decision details the history of the original and amended petitions for modification of D.04-06-014 filed jointly by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) on February 1 and June 15, 2007, respectively. In reciting that history, the Proposed Decision notes only that CEERT had "support[ed] the [original] petition in part," and had responded on June 29 to the amended petition.¹ However, to correct misstatements contained regarding CEERT's position in the Proposed Decision issued on May 22 on the original petition, CEERT had also filed comments on that Proposed Decision.

¹ Proposed Decision, at p. 3.

This fact is not reflected in the current Proposed Decision nor is CEERT's position on the key issue on whether to retain *any* "non-modifiable" standard terms and conditions.

In fact, in both its comments filed on the May 22 Proposed Decision and in response to the amended petition, CEERT made its position clear: "[T]he Commission should 'expressly permit *all* RPS standard terms and conditions to be subject to negotiation and modification by agreement of the contracting parties and should cease to identify any standard term as "non-modifiable."'"² In its comments on the May 22 Proposed Decision, CEERT did acknowledge, but only as an alternative, that the non-modifiable standard terms could be reduced consistent with a more recent Commission decision (D.06-10-019).³

After reviewing the amended petition and in its response to that petition, however, CEERT concurred with PG&E and SCE that, if "non-modifiable" STCs were to be retained, they should only include definitions of "Green Attributes," "Renewable Energy Credits" (RECs), and "CPUC Approval." Specifically, CEERT stated: "[F]or the many reasons stated in the Amended Petition, ... its requested relief, especially a reduction in the non-negotiable STCs to the three identified above, is both reasonable and responsive to the concerns expressed in the [May 22] Proposed Decision" and will, at the same time, "foster a more efficient and practical approach to renewables procurement to meet RPS goals."⁴

CEERT's position, since first participating on this issue, remains unchanged: "[T]he Petitioners' request to allow *all* RPS standard terms and conditions to be subject to negotiation and modification by agreement of the contracting parties [is] reasonable."⁵ With the amended petition's recommendation that 3 terms can remain non-negotiable, CEERT urges the

² CEERT Comments on May 22 Proposed Decision, at p. 4; emphasis added.

³ CEERT Comments on May 22 Proposed Decision, at p. 4.

⁴ CEERT Response to Amended Petition, at p. 5.

⁵ CEERT Comments on May 22 Proposed Decision, at p. 2 (emphasis added).

Commission to modify the current Proposed Decision to limit the non-negotiable STCs to *only* those 3 terms (definitions of Green Attributes, RECs, and CPUC Approval) for the reasons stated in the amended petition. This change remains a much “needed and timely ‘adjustment’ to the RPS Program based on, and in response to, ‘the needs and experience of the RPS program as it [has] developed.’”⁶

PROPOSED CHANGES TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on its comments above, CEERT recommends that the following changes be made to the identified Findings of Fact and Conclusions of Law contained in the Proposed Decision. Additions are indicated in bold; deletions are indicated in bold strike-through.

Proposed Findings of Fact (PD, at pp. 29-30):

- ~~7. The concept of eligibility in STC 6 is important and must be included in RPS contracts.~~
- ~~8. It is obvious that all contracts for RPS-eligible generation must ensure that RPS buyers and sellers are buying and selling the same thing (STC 6 regarding eligibility).~~
- ~~9. STC 16 (Assignment) involves a balance of interests between sellers, assignees, buyers, customers and ratepayers and, while some sellers may have found the existing assignment term unacceptable, this is not the case for all sellers.~~
- ~~10. It is reasonable to require that each contract contain a term clearly stating the applicable governing law (STC 17 regarding applicable law).~~
- ~~11. The solution to addressing changes in law is not to eliminate or make modifiable STC 17 (Applicable Law).~~

⁶ CEERT Response to Amended Petition, at p. 5.

14. Greater flexibility with regard to ~~four~~ **seven** currently non-modifiable STCs (by converting them to modifiable STCs) will improve parties' ability to complete deals, and strict uniformity for these four terms is unnecessary.

Proposed Conclusion of Law (PD, at p. 30):

~~2. Modifications to modifiable STC agreed to between the buyer and seller must continue to be consistent with applicable law and government regulations (e.g., SEPs, confidentiality).~~

CONCLUSION

CEERT urges the Commission to modify the Proposed Decision of ALJ Mattson to grant the relief requested by PG&E's and SCE's amended petition for modification of D.06-04-014 to reduce the number of non-modifiable STCs to 3 definitions. Specifically, the definitions of Green Attributes, RECs, and CPUC Approval should be the only terms identified as non-negotiable in an RPS-compliant procurement contract.

Respectfully submitted,

October 22, 2007

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CERTIFICATE OF SERVICE

I, Sara Steck Myers, am over the age of 18 years and employed in the City and County of San Francisco. My business address is 122 - 28th Avenue, San Francisco, California 94121.

On October 22, 2007, I served the within document **COMMENTS OF THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON THE PROPOSED DECISION OF ALJ MATTSON ON AMENDED PETITION FOR MODIFICATION OF DECISION 04-06-014**, in R.04-04-026, in the manner required by Rules 1.9 and 1.10 of the Commission's Rules of Practice and Procedure, with separate service by U.S. Mail of hard copies on Commissioner Peevey and ALJs Mattson and Simon, at San Francisco, California.

Executed on October 22, 2007, at San Francisco, California.

/s/ SARA STECK MYERS
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October 22, 2007

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